

COMPLIANCE BOARD OPINION No. 94-5
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July 29, 1994

Mr. Dick Farley

The Open Meetings Compliance Board has considered your complaint dated May 11, 1994, concerning the meeting practices of the Mayor and City Council of Frostburg ("City Council" or "City"). The Board also considered the response by Jeffrey S. Getty, Esquire, City Attorney, on behalf of the City Council.

In general, your complaint alleges that the City Council has held closed sessions under circumstances not authorized by the Open Meetings Act and that the minutes of certain sessions do not comport with the requirements of the Act. Because your complaint encompasses 23 separate meetings, we shall not attempt any summary of your complaint or the City's response but instead discuss the issues raised about each particular meeting. We do note that, apart from one item at one meeting, the City does not contend that any aspects of these meetings were an "executive function" and therefore outside the scope of the Act.¹

I

Meeting of April 26, 1994

Section 10-509(c)(2) of the Act requires a public body that meets in closed session to include the following in the minutes of its next open session:

- (i) a statement of the time, place, and purpose of the closed session;
- (ii) a record of the vote of each member as to closing the session;
- (iii) a citation of the authority under this subtitle for closing the session; and
- (iv) a listing of the topics of discussion, persons present, and each action taken during the session.

¹ The City's one claim of executive function is discussed in Part XVI below.

The minutes reflecting the April 26, 1994 meeting indicate that the information required by subparagraphs (i) and (ii) was provided. The minutes omit the required citation of authority, however, and therefore violate the Act in this respect. In fact, none of the minutes of the 23 meetings about which you complain contains the required citation of authority. In this respect, the City Council has consistently violated §10-509(c)(2)(iii).

The most significant issue, it appears, for both you and the City is whether the minutes reflecting this meeting contain enough detail about "the topics of discussion" and "each action taken" during the closed session. The minutes recite that the "Council approved ... to rescind the action taken at the December 27, 1993, executive work session in regard to settlement of a claim. Motion to authorize City Attorney to make settlement of a claim; not carried"

This description is certainly sketchy. The City contends, however, that so abbreviated a description is appropriate for a closed session and expressly permitted by §10-508(a)(7) and (8), exceptions that permit closed sessions to "consult with counsel to obtain legal advice" and to discuss "pending or potential litigation." The intent of the litigation exception in particular, the City argues, is to allow the public body to discuss candidly its strategy for litigation without having those discussions made public and therefore available to the adverse party: "Certainly, a detailed explanation ... would materially disadvantage the public body in its attempts to resolve a claim which has potential for litigation."

The Compliance Board agrees with the City's argument. A public body is not required to divulge in its minutes sensitive information that warranted the invocation of an exception in the first place. *See* Compliance Board Opinion No. 92-5 (December 22, 1992). Indeed, the Attorney General has addressed the very issue of disclosures about settlement proposals:

Suppose, for example, that a public body closed a meeting to seek advice from its counsel about a settlement proposal in pending litigation. The statement in the minutes of the next open meeting need not disclose the nature of the proposal or the exact response of the public body.

Office of the Attorney General, *Open Meetings Act Manual* 19 (1992). Accordingly, the Compliance Board determines that the minutes for the April 26 meeting do not violate the requirement of §10-509(c)(2)(iv).

II

Meeting of March 30, 1994

The publicly available minutes of this closed session reflect that the basis for the closing was "to discuss matters of personnel, potential litigation, and contract negotiation." The session began "with all members of Council and Administrator present." Your complaint suggests that the absence of the City Attorney calls into doubt the legitimacy of the exception for potential litigation.

One of the Act's exceptions, "consult[ation] with counsel to obtain legal advice," §10-508(a)(7), may not be invoked unless the public body's lawyer is present at the meeting. *See* Compliance Board Opinion No. 93-6 (May 18, 1993). There is no comparable requirement for the lawyer's presence when the "litigation" exception, §10-508(a)(8), is invoked, because this exception speaks of "consult[ation] with staff, consultants, or other individuals about pending or potential litigation." Nor is the lawyer's presence required for invocation of the other exceptions alluded to in the minutes. Thus, the absence of the City Attorney from the March 30 meeting does not invalidate the exceptions invoked by the Council.

The other aspects of your complaint about the March 30 meeting all involve allegations that topics of discussion at the closed session were not within the scope of an exception under the Act. The first of these items involved the question whether the Council should approve the purchase of memberships in a warehouse club as a form of fringe benefit for City employees. The Council decided not to do so. The City suggests that this discussion was permissibly closed under the "personnel" exception, §10-508(a)(1), which authorizes discussion in closed session of "the appointment, employment, assignment, promotion, discipline, devotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom [the public body] has jurisdiction" or of "any other personnel matter that affects 1 or more specific individuals."

The Board cannot agree with the City's position. This exception is applicable only for a discussion of a "specific" personnel matter — that is, a matter involving identifiable individuals. If, as here, the issue is one affecting an entire class of employees, the exception in §10-508(a)(1) may not be invoked. *See* Compliance Board Opinion No. 93-11 (November 30, 1993). Thus, the Compliance Board finds that the Council violated the Act in this aspect of the March 30 meeting.

The next item about which you complain is a discussion of a limitation on the amount of "departmental petty cash" and a requirement for cash receipts. The City states that this topic "was discussed and approved in closed session in order to avoid a public announcement of the petty cash which is kept on hand It was thought to be important for security reasons."

The public security exception, §10-508(a)(10), is limited to matters relating to the deployment of fire and police services and staff and the development and implementation of emergency plans. It would not cover the discussion in question here, and in any case that exception was not invoked by the Council. Accordingly, the Compliance Board finds that this aspect of the March 30 meeting violated the Act.

The next item involves a proposal described in the minutes as "a plan to cover vacations and reduce comp time." To the extent that the discussion was a general one on this topic, the exceptions invoked by the City Council would not have justified the closing. The City indicates, however, that this discussion involved a single identified individual. To that extent, the personnel exception, §10-508(a)(1), was applicable to the discussion.

This aspect of your complaint poses a dilemma for the Board. While the Board intends to give proper effect to the personnel exception, the Board can readily envision how a discussion that starts with the particulars of one employee can soon evolve into a decision-making process about personnel policy generally.

The "personnel" exception, like all of the others, is to be "strictly construed in favor of open meetings of public bodies." §10-508(c). Hence, public bodies that invoke the exception must be careful to avoid discussion of general personnel issues beyond the decision about identifiable individuals.

Based on the information available to it, the Compliance Board is unable to form an opinion whether the Act was violated by this discussion. "An opinion of the Board may state that the Board is unable to resolve the complaint." §10-502.5(f)(2). When the Board considers a complaint that the limits of the personnel exception were exceeded, the Board gives particular weight to the characterization of the discussion in the public body's minutes, for these minutes reflect the public body's contemporaneous understanding of the nature of the discussion. But the minutes of the City Council, in this and many other instances, are so cryptic that they may not accurately convey the gist of the discussion. The City's response to the Open Meetings Act complaint provides more detail but fails to satisfy the Board that the discussion stayed focused on the individual without straying into general policy formulation.

The next item in dispute is described simply as the presentation of "a police promotional policy," which the Council approved. As discussed above, the exception for personnel matters, §10-508(a)(1), would not justify the closing of a meeting to discuss a general personnel issue like police promotional policy. The City points out that the Frostburg City Police Department consists

of only fourteen individuals, and "[t]he discussion of changing the Police Promotional Policy directly affected easily identifiable individuals given the relatively small number of people who constitute the Frostburg City Police Department. In order to protect the privacy interest of the individuals involved, this matter was dealt with in closed session." The Compliance Board is unable to determine whether this discussion was sufficiently linked to decisions about identifiable individuals so as to remain within the confines of the personnel exception. Therefore, the Board expresses no opinion regarding this aspect of your complaint.

The next element of your complaint concerning the March 30 meeting involves two actions described as follows: "Sale of public property: Commissioner McKenzie wants to sell 3 junk grade city vehicles. Council approved (5-0). Equipment to be advertised for sale in the newspaper. Discussion of the possibility of acquiring 3 surplus state vehicles."

The City suggests that, "[t]o the extent that the disposal and acquisition of these vehicles necessarily involves discussion regarding the values and the amount that the Council can reasonably anticipate realizing from the sale or reasonably anticipate paying for the acquisition, it pertains to the acquisition of property for public purposes." The exception alluded to, however, §10-508(a)(3), permits a closed session to "consider the acquisition of *real property* for a public purpose and matters directly related thereto." This exception does not apply to the acquisition of personal property or the disposition of property, and in any event was not cited by the City Council as authority for closing the session. The Compliance Board therefore finds that this discussion at the March 30 closed session violated the Act.

III

Meeting of March 3, 1994

This meeting is said in the minutes to be for the purpose of discussing "matters of personnel and contract negotiation." You point out in your complaint that the City Attorney was not present at the meeting. As discussed in Part II above, however, the presence of legal counsel is not generally necessary for the invocation of an exception (apart from §10-508(a)(7), "consult[ation] with counsel to obtain legal advice"). Since the Council did not invoke that exception, the absence of the City Attorney is immaterial.

You also point out that the minutes contained no public report of the actions taken during the closed session. The original minutes of the March 3 closed session were defective in this respect, but amended minutes corrected the oversight. Hence, there is no violation of the Act in this respect.²

IV

Meeting of February 28, 1994

The minutes reflecting this closed session are confusing about the basis for its closing. The motion to close the session apparently referred only to "matters of personnel." The minutes then reflect, however, a discussion of two "litigation issues." The Compliance Board has taken the position that a public body may not advance, after-the-fact, an exception that was not properly presented and voted on at the time of the closing of a session. Compliance Board Opinion No. 93-11 (November 30, 1993). To the extent that the discussion of "litigation issues" went beyond the exception for specific personnel matters – and it appears that at least one of the litigation issues had nothing to do with personnel – then the Act was violated.

The other aspect of your complaint about the February 28 meeting concerned the Council's approval of a decision that "an employee licenses [sic] was necessary for position." You suggest that this discussion should have been opened to the public. The City reports, however, that the discussion involved a specific individual's need for a license to perform his City job. The Compliance Board believes that such a discussion is encompassed by the personnel exception, §10-508(a)(1). Hence, there was no violation of the Act in this regard.

V

Meeting of February 7, 1994

This meeting also was closed on the basis of the personnel exception. The minutes relate that the "Council requested (5-0) City Attorney to give opinion on moonlighting." You suggest that this matter was not encompassed by the personnel exception. And, indeed, a discussion of "moonlighting" policy in general would be outside the exception. The City Council's response, however, indicates that the discussion of "moonlighting" concerned a specific individual.

² These minutes, like all of the others, failed to specify the specific statutory authority for closing the session and therefore violated §10-509(c)(2)(iii).

For the reasons stated in Part II above, the Board is unable to determine whether this discussion was permissibly within the scope of the personnel exception. The City goes on to state as follows: "[The matter] also dealt with legal issues regarding the extent to which the City could either approve, disapprove or attac[h] conditions to such secondary employment. The potential for litigation is implicit ... and [the matter] was conducted in closed session due to potential litigation as well as protection of the individua[l] involved." Again, the Compliance Board wishes to point out that a public body may not justify, after the fact, a discussion in closed session on the basis of an exception that it did not invoke prior to the closing of its meeting.

VI

Meeting of January 31, 1994

The first item of concern to you is described in the minutes as follows: "Council agreed (5-0) to enforce the personnel policy provision concerning requests for comp time off." A discussion of the general issue of policy enforcement would be outside the exception. The City responds that this discussion "involve[d] citation to the actions of individual employees." For the reasons stated in Part II above, the Board is unable to determine whether this discussion was permissibly within the scope of the personnel exception.

The next aspect of this meeting about which you complain was a series of actions described as the Council's "review[ing] and approv[ing]" contracts for named individuals "as per budget." You suggest that these approvals should have been done in open session.

The City responds that all of these matters involved whether to give the identified individuals raises. Apparently, the money for the raises was included in the budget but the Council retained the right to approve or disapprove the particular contracts that would contain the raises. The City asserts that these discussions are encompassed by the personnel exception, and the Compliance Board agrees. Likewise, the last aspect of this meeting about which you complain – Council approval of a promotion for a particular employee – is encompassed by the personnel exception.

There is no prohibition in the Open Meetings Act against a public body's taking an action in closed session, if an exception permits the session to be closed. Indeed, §10-509(c)(2)(iv) requires that the minutes of a public body's next open session contain, among other things, an identification of "each action taken during the [preceding closed] session." This provision would be meaningless if a public body were precluded from taking actions during a closed session.

VII**Meeting of November 29, 1993³**

This meeting was closed to discuss personnel matters. The first item of contention is the Council's discussion and vote "on the creation of a new Sgt. position" You comment that this appears to be a policy discussion outside the scope of the exception.

The City responds that the discussion of the creation of this new position was not done in the abstract, but rather was a question of whether to promote a particular individual by creating the position. Under these circumstances, the Board believes that the discussion fell within the personnel exception. Although the minutes reflect the fact that the appointment of the individual to the newly created position was done as a separate action, it is apparent that the two were integrally related.

Next, you comment that the action of the Council in asking for the resignation of the former City Attorney and to recruit a replacement should have been open to the public. The Compliance Board agrees with the City that these are specific personnel matters encompassed by the exception.

The final item at issue with regard to the November 29 meeting is shown in the minutes as a discussion of a "housing authority opening." Again, this discussion apparently concerned the potential appointment of a specific individual to an opening. Therefore, the personnel exception applied.

VIII**Meeting of November 1, 1993**

This session was closed "for matters of personnel." The item at issue was the Council's decision to "restate policy on employees living in corporate limits." The reference in the minutes to a "policy" gives rise to the impression that a more general discussion was undertaken, and to the extent that it was, the personnel exception did not apply. The City's account of the discussion in its response suggests that at least a portion of the discussion involved decisions about specific individuals. For the reasons stated in Part II above, the Board is unable to determine whether this discussion was permissibly within the scope of the personnel exception.

³ Your complaint also referred to a closed meeting on December 27, 1993. The description of your concern, however, did not involve any issue under the Open Meetings Act.

IX**Meeting of October 25, 1993**

The situation regarding this meeting is similar to several discussed above: The Council took various personnel actions regarding specific individuals. Since nothing in the Open Meetings Act requires these personnel actions to have been taken in open session, there was no violation of the Act. *See* Part VI above.

X**Meeting of August 30, 1993**

This discussion concerned a potential pay raise for specific police officers. It was properly closed under the personnel exception.

XI**Meeting of July 26, 1993**

According to the minutes, this session was closed "to discuss legal issues, personnel and negotiation issues." Your complaint suggests that the following two items should have been discussed in open session: Council approval of "employees request to select 100% PPN Plan provided the employees pay the additional amounts," and Council approval of a policy that "if promotion occurs and no monetary raise occurs at that time, then 1% adjustment would be implemented." The City did not discuss this meeting in its response.

Based on the characterization of these matters in the minutes, it appears to the Compliance Board that these were discussions of personnel policy matters, rather than personnel decisions about specific individuals. Nor is there any basis in the minutes to conclude that the discussion involved the rendering of legal advice by the then City Attorney, as the motion to close the meeting suggested.⁴ Accordingly, the Board concludes that the Council violated the Act by holding these discussions in closed session.

⁴ There are no exceptions in the Act for "legal issues" or "negotiation issues" as such. These terms were evidently used by the City Council shorthand for the more narrowly worded exceptions in §10-508(a)(7) and (14). Neither applies to the discussion reflected in the minutes.

XII**Meeting of June 8, 1993**

At this meeting, the City Council approved raises for nine specific employees. As we have discussed in Part VI above, the Act was not violated merely because the Council took final action in a closed session. The personnel exception applied.

XIII**Meeting of May 24, 1993**

This session was closed "to discuss personnel salary and benefits." You complain of the discussion of four matters, all of which should have been discussed in open session, in your view.

The first of these was agreement by the Council "to modify employees' contract for automatic renewal unless there is cause." The City explains the matter this way:

The Council's action pertained to specific language that appeared in employees' contracts with regard to whether they would be renewable and the extent to which the Council retained discretion not to renew the contracts. The Council believed that these were personnel matters which needed to be discussed so that changes could be communicated to the effected [*sic*] employees in the appropriate manner so as to minimize any disruption caused by the changes in the employees' contract.

There is no indication in the minutes or the City's explanation that this discussion involved the terms of employment of specific individuals. Rather, it appears to be a discussion of a retention policy for employees generally. While the Compliance Board understands the City's desire to control the manner in which personnel policy decisions are communicated to employees, nevertheless that concern alone is not a sufficient basis on which to invoke the personnel exception. Hence, the Compliance Board concludes that the Act was violated in this respect.

The Compliance Board reaches the same conclusion regarding the next two matters in dispute, a decision not to participate in a shopping club and to maintain a "salary matrix" for the determination of pay increases. While these decisions undoubtedly affected City personnel, they appear to be kind of general personnel policy matters that are outside the scope of the personnel exception.

The final matter touched on in your complaint about this meeting is described in the minutes as the Council's decision to renew a health insurance contract with Blue Cross/Blue Shield. Ordinarily, a discussion of health insurance benefits for employees as a whole would not be encompassed by the personnel exception. In this instance, however, the City reports that the Council focused on the claims of specific employees and the impact of those claims on the premiums for health insurance. For the reasons stated in Part II above, the Board is unable to determine whether this discussion was permissibly within the scope of the personnel exception.

XIV

Meeting of April 14, 1993

The item complained about was the Council's decision "to hire one additional person ... to help in the Rec Department." According to the City, this discussion was focused on a particular individual as the potential new employee and therefore was encompassed by the personnel exception. The Compliance Board agrees.

The minutes reveal a different problem with this meeting, however. The minutes began as follows: "At the April 5, 1993 [meeting], a motion was made by Commissioner Bosley to enter into executive session on April 14, 1993 ... for the purpose of discussion [of] issues of personnel and litigation." In the view of the Compliance Board, a public body may not take a vote at one meeting to close a future meeting. The Act states as follows: "Unless a majority of the members of the public body present and voting vote in favor of closing the session, the public body may not meet in closed session." §10-508(d)(1). In other words, those who are present at the meeting to be closed are the ones who must make the decision to close the meeting and who are held accountable for that decision. Since there is no assurance that the members of a public body who are present at one meeting will be present at the next, a vote at one meeting to close the next one does not satisfy the statutory requirement.

XV

Meeting of January 28, 1993

This session was closed "to discuss matters of personnel and negotiation." You complain about five matters discussed at that meeting.

The first is described in the minutes as a denial by the Council of a "clothing allowance request." The City explains that "[t]he matter was conducted in closed session in order to give the Mayor and opportunity to discuss the decision directly with the employees who were affected by the decision."

The Compliance Board is unable to reach a conclusion about the application of the personnel exception to this discussion. If the discussion of the policy issue about granting a clothing allowance was intertwined with facts about the particular employees, the personnel exception would apply. If, on the other hand, the Council decided against clothing allowances as a matter of policy and then this decision was communicated to the employees, the personnel exception would not apply. *See* Parts II and XIII above. The Compliance Board cannot discern which is the better characterization of the discussion and therefore refrains from offering an opinion on this matter.

Your complaint also suggests that the public should have been permitted to observe what the minutes describe as a discussion and Council agreement "to bid hot stove ballfield." Judging from the City's response, this discussion was apparently about the details of a project to be put out to bid. As the City describes it, "this was matter appropriate for closed session inasmuch as it dealt with a contract to be awarded and the strategy related to the placing of the contract."

The Open Meetings Act permits a closed session to allow a public body to "discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process. §10-508(a)(14). This exception applies only "before a contract is awarded or bids are opened." While the City's response is rather conclusory, if the Council was discussing its strategy for obtaining the most favorable bids, then this exception applied and allowed a closed session for this purpose.

The next item mentioned in your complaint is an agreement by the Council "to allow Commissioner McKenzie to negotiate for snow bills." The City's response elaborates as follows: "Mr. McKenzie, Commission[er] of Public Works, was authorized to enter into negotiations to attempt to compromise bills associated with snow removal. He was then directed to pay all bills concerned. Such questions of negotiation and compromise are appropriate for consideration in a closed session."

As the language of the exception quoted above indicates, §10-508(a)(14) does not extend to all matters of "negotiation and compromise"; it is limited to the competitive bidding or proposal process. Although under some circumstances a public body's discussion of a compromise of disputed bills might be sufficiently related to "potential litigation" as to justify the invocation of the exception in §10-508(a)(8), there is no such assertion in the City's response, and in any event the litigation exception was not invoked prior to the closing of the meeting. Therefore, the Compliance Board concludes that the City Council violated the Open Meetings Act in this respect.

The next item mentioned in your complaint is summarized in the minutes as "[d]iscussion of authorization to be given at next Council meeting for filtration application." In its response, the City states that "the matter discussed resulted in no action as it was simply a discussion of action to be taken at the next public meeting." This is not a justification for holding the discussion in closed session, however. If a matter is required to be discussed in open session, every aspect of the public body's discussion, from the beginning to the end, must be in open session. *See* Compliance Board Opinion No. 93-6 (May 18, 1993). As the Court of Appeals has held: "[T]he Act applies, not only to final decisions made by the public body exercising legislative functions at a public meeting, but as well as to all deliberations which precede the actual legislative act or decision, unless authorized by [the Act] to be closed to the public." *City of New Carrollton v. Rogers*, 287 Md. 56, 72, 410 A.2d 1070 (1980). The Compliance Board concludes that the City Council violated the Act by discussing the filtration application in closed session.

The final matter discussed in your complaint about this meeting is described in the minutes as an instruction to the Administrator "to run ads for the laborer in the Water Department." Although a decision to fill a position in and of itself is not the kind of specific personnel matter encompassed by the personnel exception, in this instance the City states that the discussion "involved a review of the current employees in the Water Department and their capabilities and problems." For the reasons stated in Part II above, the Board is unable to determine whether this discussion was permissible within the scope of the personnel exception.

XVI

Meeting of January 4, 1993

This meeting was closed "to discuss personnel matters."

The first two items complained about at this meeting involved decisions by the Council to allow certain of its members and employees to attend a reception and a meeting. Although the City characterizes this matter as "really just administrative details to determine who was going to attend and who was not," the fact remains that this item of discussion is not encompassed by the personnel exception and therefore should not have been conducted in closed

session.

The third item of complaint regarding this meeting concerns the Council's "[d]iscussion of change in employment contracts wording." You made a similar complaint about this issue in the May 24, 1993 meeting. The Board's opinion in this regard is set out under that heading, Part XIII above.

The next item of complaint concerns the Council's "[d]iscussion of new computer capabilities." In its response, the City elaborates that the topic of this discussion was a possible change in the water rate penalty and the capability of the computer to accommodate this change. "The computer capabilities were discussed in closed session in connection with the discussion of the change in the water rate penalty as it dealt with an executive function," the City's response concluded.

This is the only instance in which the City asserts that the Council was carrying out an executive function. The Board has been presented with insufficient information, however, about the role of the City Council in the decision-making process regarding the City's water supply. That is, if the choice of a water rate penalty is effectively the enactment of a "measure to set public policy," the City Council was carrying out a "legislative function," and the discussion should have been conducted in open session. §§10-508(d)(1) and 10-503(a)(1)(i). If, on the other hand, under Frostburg's scheme of government the City Council has administrative responsibilities for the water system and is authorized by a previously enacted law to set the water rate penalty, then the Council was conducting an "executive function" and was not subject to the Open Meetings Act during that discussion. *See generally* 78 *Opinions of the Attorney General* ____ (1993) [Opinion No. 93-028 (July 28, 1993)] (detailed discussion of the meaning of "executive function"). The Compliance Board has insufficient information to reach an opinion on the matter.

The last item concerning this meeting is summarized in the minutes as a "[d]iscussion of insurance for retirees [*sic*] and due to disability. Council agreed (5-0) that regular retirees [*sic*] at 62 would have their health benefits paid until 65. Those with disability will be paid until 65 or until their Medicare disability begins."

On the face of the minutes, this discussion appears to be a matter of general personnel policy not encompassed by the personnel exception. The City indicates, however, that "[t]he discussion was prompted by the disability of one employee The question with regard to the policy necessarily dealt with [the employee's] particular situation and the benefits he had been receiving." For the reasons stated in Part II above, the Board is unable to determine whether this discussion was permissibly within the scope of the personnel exception.

XVII**Meeting of October 29, 1992**

The minutes of this meeting reflect a motion "to go into executive session" but no reference to either the authority to do so or the purpose of the session. This omission violates the Act.

The first two matters complained about involve Council approval for certain individuals to attend two dinners. This issue is the same as that raised concerning the January 4, 1993 meeting, and the Board's conclusion in that regard applies here as well. *See* Part XVI above.

The next item complained about involves Council approval of raises for specific employees. This discussion involved no violation, for the reasons previously discussed in Part XIII above.

The next item was a Council agreement to pay mileage to a City employee for using his personal vehicle while on City business. Again, this is a specific personnel matter permitted to be conducted in closed session.

The next item mentioned in your complaint is summarized in the minutes as Council approval of "call forwarding at Rec Department." The City elaborates on the matter as follows:

At issue was an additional charge for \$4.00 per month for call forwarding at the Rec Department in order to free a specific employee from answering the phones so that she could do other City work. This is a matter which dealt with specific employees, and how they were performing their jobs, and the need to rearrange responsibilities in order to accomplish the tasks. Because it dealt with specific employees, it was conducted in closed session.

Unlike many of the other personnel matter discussed in this opinion, this item did not involve compensation or fringe benefits for specific individuals. Rather, it concerned the entering of a contract with a public utility in order to enable the employees of a municipal department to work more efficiently. This discussion is outside the scope of the personnel exception. The personnel exception would not justify, for example, the closing of a discussion of whether to buy computers, even if the discussion focused on the potential for a more efficient performance by specifically identified employees. Thus, the Compliance Board concludes that the City Council violated the Act by closing the discussion of the "call forwarding" issue.

The next item identified in your complaint is summarized as a "[d]iscussion of 2 spaces reserved at the police academy to be discussed at council." The City's response confirms that "no specific candidates for the police academy ..." were discussed. The City does point out that the underlying reasoning for reserving the spaces had to do with the disability of a particular police officer. Because there is no indication, however, that the City Council expected to, or did, discuss the situation of this officer, as distinct from the more general issue of reserving places at the academy, the personnel exception did not apply to this matter.

The last item at this meeting involved a Council decision "to be proactive in economic development and [to] consider assistance once development is announced." The City explains that this discussion concerned a specific economic development project and contends that the discussion was permissibly closed under §10-508(a)(4), which permits a closed session to "consider a matter that concerns the proposal for or industrial organization to locate, expand, or remain in the State." Since the minutes do not reflect that the City Council properly invoked this exception, the Council may not rely on it now. Hence, the discussion of this economic development matter in closed session violated the Act.

XVIII

Meeting of October 6, 1992

Again, the minutes do not reflect the invocation by the Council of any specific exceptions prior to its closed session. Hence, the closed session was legally improper.

The Compliance Board notes that the first item referred to in the complaint, a discussion of a potential land purchase and an authorization to a commissioner to negotiate on behalf of the City, could properly have been closed under §10-508(a)(3), which permits a closed session "to consider the acquisition of a real property for a public purpose and matters directly related there to." However, as the City concedes, two other items of discussion, on the abatement of taxes on certain property and the renewal of a lease, should not have been held in closed session in any event, and therefore the City Council violated the Act.

The last item at this meeting identified in your complaint is summarized in the minutes as "[d]iscussion of three proposed changes to the personnel policy" The City states that "[a]ll of these matters were initiated from specific complaints of employees with specific problems. The discussion in action was taken to resolve these complaints." For the reasons stated in Part II above, the Board is unable to determine whether this discussion was permissibly within the scope of the personnel exception.

XIX**Meeting of September 8, 1992**

This meeting was closed "to discuss personnel issues." The first item mentioned in your complaint is summarized in the minutes as a Council agreement "to sign off on the Piney Dam Project and pay the outstanding money owed to Trumble. They also wanted a letter sent to FMHA and Trumble stating their dissatisfaction with some areas of the job." Plainly, this discussion does not involve a specific personnel matter and therefore was conducted in violation of the Act. The City notes that this matter involved "legal issues," but there is no exception for "legal issues" as such. The exception for consultation with counsel to obtain legal advice was not invoked, nor could it have been, because the City Attorney was not present. The City suggests that this matter related to "potential litigation," but the exception on that subject was not invoked.

The other item identified in your complaint was a discussion of the serving of liquor at a dinner hosted by the City. This discussion is obviously outside the scope of the personnel exception, and it was unlawful for the City Council to have had the discussion in closed session.

XX**Meeting of August 24, 1992**

The minutes reflect a motion to go into executive session without any citation of the specific authority in the Act to do so. This procedure violates the Act.

The first item mentioned in your complaint is the Council's decision "to advertise in-house police vacancy." The City indicates that this discussion was closely linked to a discussion of the disability of a particular police officer. Had the City Council properly invoked the personnel exception, the discussion could have been closed.

The other item mentioned in your complaint is the following: "City picnic was placed on hold until fall." The City cites no basis in the Act for having this discussion behind closed doors, and the City Council therefore violated the Act by doing so.

XXI**Meeting of July 30, 1992**

The Council again violated the Act by going into closed session without citing a basis for doing so.

The specific matter about which you complain is summarized in the minutes as a Council agreement "to the negotiations with State and FMHA for closing out \$225,000 loan." The City comments in its response that "[t]he negotiations and strategy for a Contract are proper subjects to closed sessions under Section 10-508(a)(14)." This characterization of the exception is overly broad. The exception applies only to certain discussions about "the competitive bidding or proposal process." It is not an exception for every kind of negotiation in which a public body might engage. Negotiations with the State and a federal agency regarding a loan are not encompassed by this exception (which was, in any case, not cited by the City Council prior to closing the meeting). Hence, the City Council violated the Act.

XXII**Meeting of July 22, 1992**

In this instance, the minutes reflect, albeit with insufficient exactness, a reference by the City Council to the basis for closing the session: "The Council went into executive session to discuss matters of negotiation." The "matters of negotiation" had to do with a dispute over a loan with a federal agency.

For the reasons discussed in Part XXI above in connection with the July 29, 1992, meeting, there is no broad exception in the Act for "negotiation." The City Council violated the Act by having a discussion in closed session that exceeded the limits of the exception that was invoked.

XXIII**Meeting of July 8, 1992**

The Council closed this meeting "for matters of personnel and negotiation." The three items mentioned in your complaint all involve personnel matters: an interview and a decision to hire a particular lawyer as City Attorney, a decision to ask for the resignation of a temporary employee, and "[d]iscussion of contractual and classified service." The City suggests that all three items were sufficiently linked to a consideration of the status of identified individuals as to fall within the personnel exception.

The Compliance Board agrees that the personnel exception applied to the discussion of the hiring of the City Attorney and the potential resignation of the summer employee. The description of the third matter in both the minutes and the City's response is too vague to permit the Compliance Board to reach any conclusion whether the discussion was properly confined to the scope of the exception.

XXIV

Conclusion

At the close of its response, the City of Frostburg stated "that it has at all times attempted to adhere to the spirit and the letter of the law. To the extent there have been any violations of the Open Meetings Act, those violations were inadvertent" The Compliance Board does not doubt the good faith of the City's officials and recognizes that members of a public body, particularly in a small town, sometimes have a thankless task and may perceive an unfair burden in a requirement that they adhere strictly to the requirements of the Open Meetings Act.

But public officials have an overriding duty to uphold the law, including the Open Meetings Act. This opinion contains a lengthy catalog of instances in which the City Council of Frostburg failed to carry out this responsibility. The Council was too quick to assume that it could hold its discussions behind closed doors and much too casual in carrying out its of the procedural requirements of the Act. The Compliance Board hopes and expects that the City Council will reform its practices and come into full compliance with the Act.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler Webb